

PLANNING BOARD ROLES AND RESPONSIBILITIES

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NH Fall Planning and Zoning Conference

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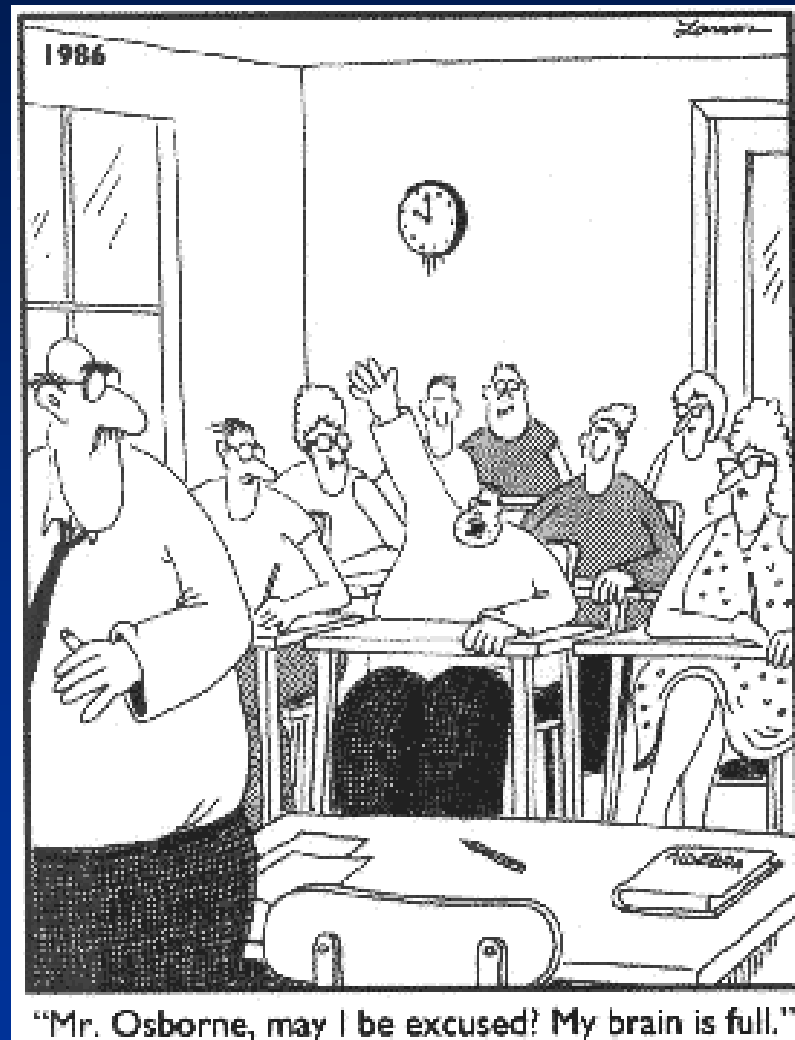
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TOPICS

- **Planning Board Basics**
- **Master Plan**
- **Application and Review Procedures**
- **Applicant's Perspective**
- **Site Plans & Subdivisions**
- **Capital Improvements Program**
- **Open Space Subdivisions**
- **Impact Fees**
- **Workforce Housing**
- **Questions/Comments**

Class Participation



Opening Comments

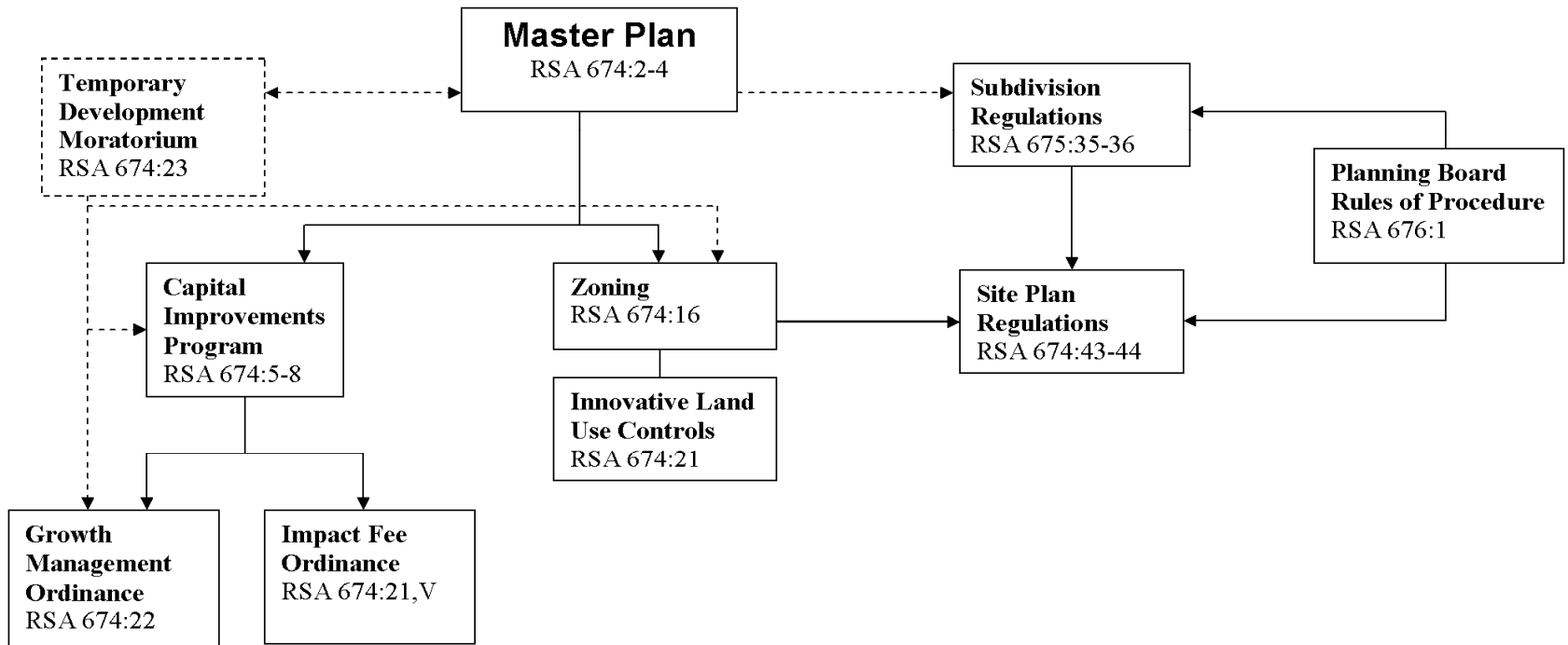
Planning Board Members (& Planners) can be:

- Frustrated by inability to do more planning
- Prone to assume worst case scenario
- Unappreciated by unhappy applicants, opponents, or both
- Misled by smooth-talking applicants and presentations

*“We are the Planning Board, not the Wait
And-See-What-Happens Board!”*

Anonymous Planning
Board Member

Municipal Land Use Regulation



Other Regulatory and Non-Regulatory Issues

Regulatory

- **Zoning Board**—yes, you have to have one!
- **Building Code**—proposed and adopted like a zoning ordinance
- **Historic District**—proposed and adopted like a zoning ordinance
- **Selectmen or Council**—they are the enforcers, not you!
- **Excavation Regulations**—if you are the regulator
- **Developments of Regional Impact**—take this seriously!

Non-Regulatory

- **Conservation Commission, Housing Commission, Heritage Commission, Agriculture Commission**—advisory, but can have important roles in the planning process. NOTE: your zoning ordinance can give them a regulatory role through RSA 674:21.
- **Regional Planning Commission**—seek their advice, participate in their activities, use them as a resource (if you're reviewing a development application that has the potential for regional impact, the RPC (and other affected municipalities) ***must*** be notified.

Basics – Planning Boards

RSA 673

- Members must be residents
- 9 members in cities, 7 or 9 in towns with town councils, 5 or 7 in other towns
- Appointed by Selectboard or elected
- 3 year terms
- May have up to 5 alternates—if an appointed board, then by the “appointing authority”; if an elected board, then by the regular members

Basics – Planning Boards

RSA 673 (cont'd.)

- 1 year term for Chair; may be re-elected
- Ex officio member cannot be Chair
- Must hold at least 1 meeting per month
- Majority of membership is quorum
- Board chair designates alternates to fill in for absent or disqualified member
- Regular alternates can't fill in for Selectboard's ex officio

Basics – Planning Boards

RSA 673 (cont'd.)

- Members may be removed by Selectboard after public hearing for inefficiency, neglect of duty, or malfeasance in office
- Need a written statement of reasons for removal
- Board may appoint employees, contract with consultants, accept gifts and grants in exercise of functions

Working With Other Boards

- Share goals
- Hold joint work sessions
- Recognize that each Board has different functions and priorities
- Conflict is inevitable but can be minimized by open communication

Duties of Planning Boards

- RSA 674:1 – Duties of the Planning Board
- RSA 674:2-4 – Master Plan
- RSA 674:5-8 – Capital Improvements Program
- RSA 674:36 – Subdivision Regulations
- RSA 674:44 – Site Plan Review Regulations
- RSA 676:4 – Procedure on Plans
- RSA 155-E:1 – Excavation permits (usually planning board) (but we're not talking about this)

Duties of Planning Boards

- RSA 36:56 – determine if application constitutes a DRI (Don't forget to check RSA 674:53 as well; governs land split by municipal borders)
 - Building Inspector must also make DRI determinations
- RSA 674:5 – CIP (often by Planning Board in smaller communities, required for growth management ordinances and impact fees)
- Local regulations & bylaws
- Court Cases

Duties of the Planning Board

RSA 674:1

- Prepare and amend Master Plan
- Make recommendations for development of community, public structures, municipal improvements

Duties of the Planning Board

RSA 674:1 (cont'd.)

- Consult with and advise public officials
- Enter and examine parcels of land
- Recommend zoning amendments

Issuance of PB Decisions

RSA 676:3

- A Planning Board must issue a final written decision which either approves or disapproves the application
- If it is not approved, the Planning Board must articulate why in writing
- Minutes from the meeting as well as the issuance of decision must be on file for inspection at the town hall within 144 hours of such a vote

F. Sherkow:

“Planning without action is futile, action without planning is fatal.”

Master Plan

RSA 674:1-4

- Planning Board prepares and updates the Master Plan
- Purpose is to guide future development, aid in designing ordinances, achieve principles of smart growth, sound planning, and wise resource protection
- Master Plan is the backbone of growth management system
- The Master Plan is **NOT** a regulatory document but a policy document to guide the community

Master Plan (cont'd.)

RSA 674:1-4

- Must include vision and land use sections
- May include these sections:

Transportation

Economic development

Natural hazards

Utility/public services

Regional concerns

Community Design

Housing

Community facilities

Natural resources

Recreation

Cultural/historic resources

Neighborhood plan

Implementation

and now, Energy!

Master Plan Preparation

- Data collection and inventory
 - Base maps, statistics, inventories, surveys
- Data analysis and evaluation
 - What do the facts mean?
- Plan preparation
 - Summarize data and analysis
- Plan adoption
 - Public hearing, Planning Board vote

Charles Darwin:

“It is not the strongest of the species that survive, nor the most intelligent, but the one most responsive to change.”

Relationship Between the Master Plan & Zoning Ordinance

- Simply put, the Master Plan provides the legal basis for the Zoning Ordinance
- Whereas the Master Plan articulates broad policy goals (such as a vibrant, mixed-use downtown), the Zoning Ordinance will indicate specifically what that means (20,000 SF lots with sewer & water, first floor commercial, second floor residential)

Relationship Between the Master Plan & Zoning Ordinance (cont'd)

- The Planning Board also shall “recommend to the local legislative body amendments of the zoning ordinance or zoning map or additions thereto” according to RSA 674:1.V.
- RSA 674:2 states that the Master Plan “shall be a set of statements and land use and development principals for the municipality with such accompanying maps, charts, and descriptions as to give legal standing to the implementation ordinances and other measures of the planning board.”

Application/Review Procedures

- Conceptual discussions (RSA 676:4, II)
- Checklists (Subdivision and Site Plan)
- Staff review (RSA 673:16, 676:4)
- Outside technical reviews (RSA 676:4, I(g))
- Site visits (nothing beats a “view”)

Application/Review Procedures

RSA 676:4

- Regulations should specify what constitutes a completed application
- Board determines if application is complete and whether it is a DRI
- Must act within 65 days or agree to an extension with the applicant

Application/Review Procedures

RSA 676:4 (cont'd.)

- Need a public hearing to approve or deny a plan, except minor lot line adjustments
- Can impose reasonable fees for expenses and special studies (see RSA 673:16)
- May allow pre-application review of plans
 - Preliminary conceptual consultation
 - Design review (but see vesting in RSA 676:12, VI – protection against regulatory changes for 12 months after the end of the design review process)

Making a Decision

- Conditions of approval (RSA 676:4, I(i))
 - *Precedent* (preliminary approval)
 - *Subsequent* (standards for ongoing compliance)
- Vesting of final approval (RSA 674:39)
 - Four years of protection against changes to local ordinances and regulations, if there is active and substantial development* within 12 months
 - Permanent vesting after substantial completion* (except impact fees!)

* Board may define these terms by regulation or on a case-by-case basis

Desired Outcomes

- Opportunities for notice and participation should not be impaired
- Court review limited to compliance with constitution and regulations
- Court may reverse decision only if error of law or unreasonable decision
- Intent is fair and reasonable treatment of ALL parties

Dealing With Applicants

According to case law, Planning Boards must:

- Provide assistance and advise applicants
- Apply regulations fairly and reasonably
- Not pre-judge applications (favorably or otherwise)
- Not make arbitrary decisions

Allan Jacobs:

“One of the things about city planning that a lot of people don’t realize is that an awful lot of the time, it’s not what you see that says it’s a good job. Often it’s what you don’t see.”

What Applicants Want

- Tell them what information is required and what rules must be followed
- Consistency
- Reasonable costs
- Timely decisions
- Fair treatment
- PREDICTABILITY



Einstein discovers that time is actually money.

Types of Development

1. Subdivision Application: any effort to divide a lot or a portion of a lot is a subdivision application. Also includes lot line adjustments
2. Site Plan Application: any multi-family or commercial plan that seeks to change or expand structures on a site

Subdivision Regulations

RSA 674:36

- Provide against scattered or premature subdivision
- Provide for harmonious development
- Require proper arrangement of streets
- Provide for open spaces
- Accommodate traffic, access for firefighting

Subdivision Regulations

RSA 674:36 (cont'd.)

- Require parks and recreation
- Require land suitable for building without danger to health
- Prescribe minimum lot sizes
- Create conditions favorable to health, safety, convenience, and prosperity

Site Plan Review Regulations

RSA 674:44

- Provide for safe and attractive development
- Guard against inadequate drainage, flooding, and pollution
- Provide for harmounious and aesthetically pleasing development
- Provide for open/green spaces

Site Plan Review Regulations

RSA 674:44 (cont'd.)

- Require proper arrangement of streets
- Require sufficient streets to accommodate traffic and access for firefighting
- Require that land is suitable for development
- Create conditions favorable for health, safety, convenience, and prosperity

Site Plan & Subdivision Regulations

- Enforcement
- Outside inspections
- Design standards – architecture, landscaping, signage, lighting
- “Creative plagiarism”

Edward T. McMahon, The Conservation Fund:

“Growth is inevitable and desirable, but destruction of community character is not. The question is not whether your part of the world is going to change. The question is how.”

Capital Improvements Program

RSA 674:5 - 8

- CIP is essentially a list of spending priorities, based upon projected growth needs, for the next 6 years (minimum)
- A current Master Plan MUST be present in order to create a CIP
- Authority to create a CIP may be given either to the Planning Board or to a CIP Committee
- Town Department Heads Prioritize their needs
- Submitted to the BOS/budget committee for consideration with annual town budget

Innovative Land use Controls

RSA 674:21

- Open space-cluster-conservation subdivisions
- Impact fees
- Inclusionary zoning / workforce housing
- *...and more!*

Common Problems with Open Space Subdivisions

- Open land is often an afterthought – unusable land, not visible from the street, unclear boundaries
- Lots poorly configured – awkward building envelopes, no trees left, closer together
- Finished product looks worse than a conventional subdivision
- Yield plan often overstates the number of lots allowed

How To Get Good Open Space Subdivisions

- Visit other projects
- Make sure your ordinance says what you want (and don't want)
- Educate landowners and engineers/surveyors
- Don't settle for bad projects
- Get outside help

George S. Patton

“ A good plan executed right now is far better than a perfect plan executed next week.”

Impact Fees

RSA 674:21, V

- Purpose is to help meet needs for capital facilities created by development
- Include a list of approved facilities
- Fee must be proportional share of capital improvement costs reasonably related to capital needs created by and benefits accruing to development
- Must have CIP to adopt impact fee ordinance

Impact Fees

RSA 674:21, V (cont'd.)

- Must be segregated from general fund
- May be spent by governing body
- Assessed at PB approval (if needed) or prior to building permit, collected prior to occupancy permit (if no PB approval needed)
- Must have time limit – 6 years maximum
- Project-specific exactions (RSA 674:21, V – limited to roads, drainage, water, and sewer upgrades) may be coordinated with impact fees
- A municipality may NOT apply a growth management ordinance to a development that has already had an impact fee paid or assessed

Fanson



Salada Tea Bag:

“The most efficient way to cope with change is to help create it.”

Workforce Housing Law

RSA 674:58 - 61

- All municipalities must provide for reasonable and realistic opportunities for the development of workforce housing, including rental multi-family housing
- The collective impact of all local land use regulations shall be considered to determine if such opportunities exist (a facial test)

Workforce Housing Law

RSA 674:58 - 61

- Workforce housing of some type must be allowed in a majority of land area where residential uses are permitted (but not necessarily multi-family in a majority of such areas)
- Existing housing stock shall be accounted for to determine if a municipality is providing its “fair share” of current and reasonably foreseeable regional need for workforce housing

Workforce Housing Law

RSA 674:58 - 61

- Reasonable restrictions may be imposed for environmental protection, water supply, sanitary disposal, traffic safety, and fire & life safety protection
- As part of the application, the developer must notify the Board that a workforce housing development is being proposed

Workforce Housing Law

RSA 674:58 - 61

- Upon approval, with conditions, the Board notifies the applicant of the conditions, who then has at least 30 days to identify the cost impact of the conditions upon the economic viability of the project. The Board may then modify its conditions accordingly.
- Conditions must not make a workforce housing development economically unviable (An as-applied test)
- Appeals—hearing on the merits within 6 months
- EFFECTIVE DATE: July 1, 2009

Daniel Burnham:

“Make no little plans; they have no magic to stir men’s blood and probably will not be realized. Make big plans; aim high in hope and work, remember, that a noble, logical diagram once recorded will never die, but long after we are gone will be a living thing, asserting itself with ever-growing insistency. Remember that our sons and grandsons are going to do things that would stagger us. Let your watchword be order and your beacon beauty.”

Resources

- The Planning Board in New Hampshire: A Handbook for Local Officials. NH Office of Energy and Planning. January 2006. www.nh.gov/oep/resources.htm and OEP Annual conferences.
- Innovative Land Use Handbook. NHDES / RPCs, 2008. des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm
- Municipal Law Lecture Series. www.nhlgc.org
- Housing Solutions for New Hampshire Communities. New Hampshire Housing, 2004. www.nhhfa.org/rl_housinghandbook.cfm
- The Job of the Planning Commissioner. Albert Solnit. American Planning Association, 1987
- Your Regional Planning Commission: www.nharpc.org/

QUESTIONS

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